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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALIX FORMILIEN, Plaintiff, -against- BEAU DIETL & ASSOCIATES, INC., Defendant.	Case No. COMPLAINT Plaintiff Demands Trial by Jury

Plaintiff ALIX FORMILIEN, by his attorneys, Law Office of Michael L. Ferch, as and for his Complaint, hereby alleges as follows:

Preliminary Statement

1. Plaintiff Alix Formilien brings this civil action against his former employer, Beau Dietl & Associates, for purposeful and intentional discrimination against plaintiff based on his race and national origin, as well as retaliation and wrongful termination of plaintiff's employment in violation of plaintiff's rights pursuant to Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*), 42 U.S.C. § 1981, the New York State Human Rights Law (McKinney's Executive Law § 290 *et seq.*) and New York City Human Rights Law (New York City Administrative Code § 8-101 *et seq.*), as well as various additional state and common laws.

2. As a result of defendant's discriminatory, retaliatory and other wrongful conduct, plaintiff seeks compensatory and punitive damages, as well as interest, costs and attorneys' fees pursuant to applicable federal and state laws.

The Parties

3. Plaintiff Alix Formilien ("Formilien") is a resident of Brooklyn, State of New York.

4. Defendant Beau Dietl & Associates ("BDA"), upon information and belief, is a corporation or other business entity authorized to do business in or otherwise operating in New York State pursuant to the laws of the State of New York, with its business headquarters and principal place of business at One Penn Plaza, 50th Floor, New York, New York 10119.

5. At all times pertinent hereto, defendant Company was and is engaged in investigative and security services.

Jurisdiction and Venue

6. The amount in controversy herein exceeds Seventy-Five Thousand ($75,000) Dollars exclusive of interest and costs.

7. The Court has jurisdiction of this action based on the diverse citizenship of the parties pursuant to 15 U.S.C. §1332, as well as pursuant to 42 U.S.C. §2000e-5, 28 U.S.C. §§1331, 1343, and this Court's pendent jurisdiction.

8. Venue in this District is proper pursuant to 15 U.S.C. §§1391(a)(1) and (2) in that the defendant has its principal place of business in and resides in, and a substantial part of the events or omissions giving rise to the claim occurred in, the Southern District of New York.

9. Formilien filed a Complaint with the New York City Commission on Human Rights on or about April 12, 2007, and has

received a Notice of Right To Sue, dated January 8, 2010. (A copy of the Notice of Right To Sue is annexed hereto as Exhibit "A").

10. Formilien received the Notice of Right to Sue on January 12, 2010.

11. This action has been brought within ninety (90) days of receipt of the Notice of Right To Sue.

Statement of Facts

12. Plaintiff Alix Formilien ("Formilien") was employed by defendant Beau Dietl & Associates ("BDA") on a full-time basis for approximately one (1) year, from in or about April 4, 2006 until his employment was terminated on February 23, 2007.

13. Formilien worked as a security guard for BDA during his employment, often screening visitors and employees to office buildings in New York City.

14. From the beginning of his employment until in or about September 2006, plaintiff was assigned by BDA to work at various office buildings throughout New York City, including 750 Third Avenue, 1166 Sixth Avenue, and the Morgan Library.

15. In or about October 2006, Formilien successfully completed training to work for BDA at John F. Kennedy International Airport ("JFK").

16. In or about October 2006, during a training session at JFK, Ms. Lieban DeJesus, Operations Manager of BDA, stated to BDA's Vice President of Operations, Michael Matarrese, in the presence of Formilien and another Haitian BDA employee, that

Matarrese would not understand their responses in English because "you know, they're Haitian."

17. From in or about September 2006 through January 2007, Formilien was forced to work extra shifts, in addition to his regularly-scheduled shifts, to cover for other BDA employees. Michael Matarrese repeatedly threatened to fire Formilien if he was unable to or otherwise refused to cover other shifts.

18. Also, from in or about September 2006 through in or about January 2007, on approximately four (4) occasions, Formilien was directed not to report to work at the office building at which he had been working, but was instead directed to report elsewhere for work.

19. Upon information and belief, on each of these four (4) occasions, Formilien's office building security position was filled with a BDA employee of Hispanic descent.

20. In or about January 2007, Formilien complained to Ms. DeJesus that he was being discriminated against because of his race and/or national origin, and otherwise unfairly treated because he is not of Hispanic descent.

21. Upon information and belief, Ms. Lieban DeJesus is of Hispanic descent.

22. Ms. DeJesus told Formilien the reason he was not returning to either the 750 Third Avenue or 1166 Sixth Avenue office buildings was due to BDA having "lost the contract" for each of these buildings.

23. Upon information and belief, the basis for Formilien's

transfer had nothing to do with any contract having been lost, since, shortly thereafter, Formilien obtained information from other BDA security guards -- still working at the 750 Third Avenue and 1166 Sixth Avenue buildings -- that he had in fact been replaced in each instance by a person of Hispanic descent.

24. In January 2007, knowing full well that Formilien had no method of private transportation, BDA sent Formilien to work at JFK, a round-trip of several hours for Formilien by taxicab or public transportation.

25. In late January 2007, Formilien went to Richard "Bo" Dietl, a principal of BDA, to lodge a complaint that Formilien was being discriminated against and unfairly treated by BDA.

26. Mr. Dietl's assistant told Formilien that Mr. Dietl was not in his office, and wrote down Formilien's statement on green paper.

27. Upon information and belief, instead of or in addition to providing Mr. Dietl with the notes of Formilien's complaint, those notes were given directly to Michael Matarrese.

28. On or about February 2, 2007, Formilien was questioned by Matarrese, who was quite upset, regarding the discrimination complaint Formilien had made to Mr. Dietl. Upon information and belief, Matarrese had before him the same green paper containing Formilien's original complaint to Mr. Dietl.

29. In early February 2007, as a direct result of his complaint of discrimination and mistreatment, Formilien was required to work twenty-seven (27) straight hours (instead of his

scheduled twelve (12)) at JFK without any relief whatsoever by another BDA employee.

30. Furthermore, upon information and belief, because of his complaints of discrimination and unfair treatment to Ms. DeJesus and Mr. Dietl, Formilien was relegated to work at JFK exclusively.

31. Formilien was scheduled to work from 8 a.m. to 4 p.m. on February 23, 2007.

32. At 10 p.m. on February 22, 2007, Formilien received a call from his supervisor, Arslan Krcic, who asked Formilien if he could work a double shift, beginning two (2) hours later, from 12 p.m. midnight to 8 a.m., in addition to his regularly-scheduled day shift at the same location.

33. Formilien advised Mr. Krcic that, since Formilien had one small child at home, he had no way to arrange child care on such short notice at that time of night.

34. Formilien was told by Mr. Krcic that if he could not work the additional midnight shift on short notice, there would be no more work for Formilien that week and weekend, and he should not show up for his shift on February 23, 2007.

35. Formilien then spoke with Mataresse immediately thereafter, who told Formilien that whatever Krcic told Formilien was true, and there was nothing more Matarrese, or BDA, could or would do.

36. As instructed by BDA, Formilien did not report for work at JFK on February 23, 2007 or thereafter.

37. Formilien was terminated on February 26, 2007, by Lieban DeJesus. Plaintiff was told by DeJesus that the reason he was terminated was that, despite never receiving a schedule for the week of February 26, 2007, he had failed to show up for a scheduled shift at 8 a.m. on February 26. Prior to termination, Formilien never received any verbal or written warnings of lateness or other violations prior to being terminated.

38. Formilien's termination and unfavorable treatment by BDA was not based on Formilien's work performance, but rather were the result of his complaints of discrimination combined with his superior's racist views and favoritism for employees of Hispanic descent.

COUNT I
(Race and National Origin Discrimination in Violation of Title VII)

39. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 above, with the same force and effect as if set forth in full herein.

40. BDA, an employer under 42 U.S.C. §2000e(B), with well over 15 employees, unlawfully terminated Formilien's employment on account of his race and national origin, in direct violation of Title VII.

41. Formilien was discriminated against and disparately treated by BDA, with malice and reckless indifference, because he is black, non-Hispanic, and originally from Haiti, all in direct violation of Title VII.

42. BDA supervisors and managers were aware of Formilien's

ethnicity, and their comments, acts and omissions are imputed to those of the employer, BDA.

43. BDA allowed, fostered and left unchecked an abusive environment which guaranteed a hostile work environment, disparate treatment and general discriminatory employment actions and practices as against employees, such as Formilien, who are of non-Hispanic ethnicity and origin.

44. Other similarly situated employees of Hispanic origin and ethnicity were not so mistreated and received more favorable treatment from BDA.

45. As a direct result of this discriminatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

COUNT II

(Retaliation Against Plaintiff for Complaining of Title VII Violations)

46. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 and 40 to 45 above, with the same force and effect as if set forth in full

herein.

47. Formilien complained to Ms. DeJesus, Mr. Matarrese and Mr. Dietl about the manner in which he was being treated. Formilien specifically indicated that he believed he was being discriminated against and treated unfavorably as a result of his race and national origin. Formilien's complaints were ignored.

48. BDA repeatedly and successfully retaliated against Formilien for making complaints of violations of his civil rights, including those protected under Title VII.

48. As a direct result of defendant's retaliatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

COUNT III
(Race and National Origin Discrimination
in Violation of 42 U.S.C. §1981)

49. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 above, with the same force and effect as if set forth in full herein.

50. BDA unlawfully terminated Formilien's employment on account of his race and national origin, in direct violation of

42 U.S.C. §1981.

51. Formilien was discriminated against and disparately treated by BDA, with malice and reckless indifference, because he is black, non-Hispanic, and originally from Haiti, all in direct violation of 42 U.S.C. §1981.

52. BDA supervisors and managers were aware of Formilien's ethnicity, and their comments, acts and omissions are imputed to those of the employer, BDA.

53. BDA allowed, fostered and left unchecked an abusive environment which guaranteed a hostile work environment, disparate treatment and general discriminatory employment actions and practices as against employees, such as Formilien, who are of non-Hispanic ethnicity and origin.

54. Other similarly situated employees of Hispanic origin and ethnicity were not so mistreated and received more favorable treatment from BDA.

55. As a direct result of defendant's discriminatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

COUNT IV
(Retaliation Against Plaintiff for
Complaining of 42 U.S.C. §1981 Violations)

56. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 and 50 to 55 above, with the same force and effect as if set forth in full herein.

57. BDA repeatedly and successfully retaliated against Formilien for making complaints of violations of his civil rights, including those protected under 42 U.S.C. §1981.

58. As a direct result of defendant's retaliatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

COUNT V
(Race and National Origin Discrimination
in Violation of New York State Human Rights Law)

59. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 above, with the same force and effect as if set forth in full herein.

60. BDA unlawfully terminated Formilien's employment on

account of his race and national origin, in direct violation of New York Executive Law.

61. Formilien was discriminated against and disparately treated by BDA because he is black, non-Hispanic, and originally from Haiti, in direct violation of New York Human Rights Law, McKinney's Executive Law §290 *et seq.*

62. BDA supervisors and managers were aware of Formilien's ethnicity, and their comments, acts and omissions are imputed to those of the employer, BDA.

63. BDA allowed, fostered and left unchecked an abusive environment which guaranteed a hostile work environment, disparate treatment and general discriminatory employment actions and practices as against employees, such as Formilien, who are of non-Hispanic ethnicity and origin.

64. Other similarly situated employees of Hispanic origin and ethnicity were not so mistreated and received more favorable treatment from BDA.

65. As a direct result of this discriminatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

COUNT VI
(Retaliation Against Plaintiff for Complaining of New York State Human Rights Law Violations)

66. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 and 60 to 65 above, with the same force and effect as if set forth in full herein.

67. BDA repeatedly and successfully retaliated against Formilien for making complaints of violations of his civil rights, including those protected under New York State Human Rights Law, McKinney's Executive Law §290 *et seq.*

68. As a direct result of defendant's retaliatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

COUNT VII
(Race and National Origin Discrimination in Violation of New York City Human Rights Law)

69. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 above, with the same force and effect as if set forth in full herein.

70. BDA unlawfully terminated Formilien's employment on

account of his race and national origin, in direct violation of New York City Administrative Code § 8-101 *et seq.*

71. Formilien was discriminated against and disparately treated by BDA, with malice and reckless indifference, because he is black, non-Hispanic, and originally from Haiti, in direct violation of New York City Administrative Code § 8-101 *et seq.*

72. BDA supervisors and managers were aware of Formilien's ethnicity, and their comments, acts and omissions are imputed to those of the employer, BDA.

73. BDA allowed, fostered and left unchecked an abusive environment which guaranteed a hostile work environment, disparate treatment and general discriminatory employment actions and practices as against employees, such as Formilien, who are of non-Hispanic ethnicity and origin.

74. Other similarly situated employees of Hispanic origin and ethnicity were not so mistreated and received more favorable treatment from BDA.

75. As a direct result of this discriminatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief that this Court deems just and proper.

COUNT VIII
(Retaliation Against Plaintiff for Complaining of New York City Administrative Code Violations)

76. Plaintiff repeats, realleges and reiterates each and every allegation set forth in paragraphs 1 to 38 and 70 to 75 above, with the same force and effect as if set forth in full herein.

77. BDA repeatedly and successfully retaliated against Formilien for making complaints of violations of his civil rights, including those protected under the New York City Administrative Code § 8-101 *et seq.*

78. As a direct result of defendant's retaliatory behavior, plaintiff Formilien has suffered and will continue to suffer past and future economic, physical and emotional harm in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all applicable interest; and any and all such other and further relief to plaintiff that this Court deems just and proper.

Prayer for Relief

WHEREFORE, plaintiff Formilien demands:

(a) he be allowed to recover on Count I, Title VII violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages;

(b) he be allowed to recover on Count II, Retaliation for Title VII complaints, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages;

(c) he be allowed to recover on Count III, §1981 violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000.00) in punitive damages;

(d) he be allowed to recover on his Count IV, Retaliation for complaints of §1981 violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; One Million Dollars ($1,000,000) in punitive damages;

(e) he be allowed to recover on his Count V, New York State Human Rights Law violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages;

(f) he be allowed to recover on his Count VI, Retaliation for complaints of New York State Human Rights Law violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages;

(g) he be allowed to recover on his Count VII, complaints of New York City Human Rights Law violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; and One Million Dollars ($1,000,000) in punitive damages;

(h) he be allowed to recover on his Count VIII, retaliation for complaints of New York City Human Rights Law violations, in an amount to be determined at trial, but in no less than Five Hundred Thousand Dollars ($500,000.00) in compensatory damages; and One Million Dollars ($1,000,000) in punitive damages;

(i) he be allowed to recover the costs and expenses of this lawsuit, including reasonable attorneys' fees;

(j) he be allowed to recover pre-judgment and post-judgment interest on the above sums at the highest rate allowed by law; and

(k) he be granted such other and further relief as this Court shall deem just and proper.

Dated: New York, New York
April 12, 2010

Yours, etc.,

PLAINTIFF ALIX FORMILIEN

LAW OFFICE OF MICHAEL L. FERCH

By: ______________________

Michael L. Ferch [MF6211]
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EXHIBIT A

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Alix Formilien**
250 Crown Street, Apt. 4I
Brooklyn, NY 11225

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
16F-2007-00089	**Holly M. Woodyard, Investigator**	**(212) 336-3643**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[X] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Spencer H. Lewis, Jr.,
Director

(Date Mailed)

Enclosures(s)

cc: **BEAU DIETL & ACCOCIATES**
One Pennsylvania Plaza, 50th Fl.
New York, NY 10119
Attn: Kenneth D. Arbeeny, General Counsel